

FLATHEAD COUNTY PLANNING BOARD ADDENDUM
SUBDIVISION REPORT (#FPP-12-02)
SUBSEQUENT PUBLIC HEARING
ROSEWATER PRELIMINARY PLAT
MAY 22, 2013

The Flathead County Planning Board held a subsequent public hearing regarding limited elements of the Preliminary Plat application for Rosewater Subdivision on May 8, 2013 beginning at 6:00 P.M. in the 2nd floor conference room of the Earl Bennett Building.

Previously, the request was reviewed in a public hearing by the Planning Board on February 13, 2013 and considered by the Flathead County Board of Commissioners on March 25, 2013. Pursuant to Section 4.4.6(b)(ii) of the Flathead County Subdivision Regulations (FCSR), the Commissioners determined 'new information' related to the proposed lake which was presented and received following the February 13, 2013 public hearing constituted the need for a subsequent public hearing because consideration of the 'new information' would have an impact on the findings and conclusions that the Commission would rely on to make its final decision on the proposed subdivision. Specifically, **content received and determined to be 'new information' pertained to the proposed lake's liner system and its potential for leaking, long-term maintenance and repair, and potential noise impacts associated with the proposed waterskiing use. These were the only topics considered by the Planning Board at the subsequent hearing on May 8, 2013.** Board members present included Jim Heim, Bob Faulkner, Noah Bodman, Jeff Larsen, Marie Hickey-AuClaire, Greg Stevens, Ron Schlegel, and Gene Shellerud.

On April 24, 2013 the Planning Board was provided copies of material the Commissioners determined 'new information' in addition to a draft 'Operations and Maintenance Manual' for the lake, a 'Sound Decibel Map For Rosewater Subdivision' and a 'Sound Decibel Map For Crystal Point Estates' which were submitted by the applicant on April 23, 2013. The subsequent public hearing was legally noticed in accordance with the FCSR requirements, and additional public comment on the specific limited topics pertaining to the 'new information' were received and provided to the Planning Board prior to the public hearing.

Staff provided a review summary of the Planning Board's February 13, 2013 recommendation to the Board of Commissioners; a summary of the Commissioner's review of the Planning Board recommendation and request for the subsequent public hearing based upon their receipt of 'new information, and; summarized agency and public comment received after April 24, 2013.

Following staff's presentation the applicant and technical representatives, discussed the topics associated with the 'new information' as identified by the Board of Commissioners, specifically including sound impacts and mitigation through design and the proposed lake's liner system and the proposed provisions outlined in the 'Operations and Maintenance Manual' submitted on April 23, 2013. Noted was a substantial change from prior submitted material related to repair and maintenance whereby there is no planned discharge of lake water directly into the Whitefish River in the case of needed repairs in the future.

The Board fielded several questions to the applicant and technical representatives regarding: the methods and costs for detecting and repairing a leak in the lake liner; manner of potential lake drawdowns in the event the lake water levels need lowering or emptying, and; potential for lake piezometer monitoring to produce 'false negatives' from irrigation, aquifer fluctuations, and lake leakage.

The Board opened the hearing for agency and public comments. No public agency representatives provided comment. The Board decided to take time to read submitted comments after public verbal

comments were complete and the Board limited the public verbal comments to 15 minutes. Nine individuals of the public spoke regarding the proposal. Two of the public comments were in favor of the proposal, noting the water-skiing activity would not generate problematic noise to adjoining properties and neighborhoods. Seven of the public comments were in opposition to the proposal, expressing the proposal would result in objectionable side-effects to neighborhood character in the form of objectionable sound and impacts to the underlying perched aquifer and area wells.

After applicant discussion/rebuttal and Board discussion, the Board took a fifteen minute recess to review the submitted written public comments.

Board Action:

Adoption of Findings of Fact

Stevens motioned and Larsen seconded to adopt Staff Report FPP-12-02 as Findings of Fact as previously amended by the Planning Board on February 13, 2013.

The following subsidiary motions were made:

1. Stevens 1, Larsen 2 – Add a new Finding (#35) to address mitigation of noise impacts through future Conditional Use Permit review of the waterski lake to state:

35. The impact on public health and safety with regard to noise will be acceptable because the waterski lake will be subject to the Conditional Use Permit process per the Rosewater P.U.D., and the Conditional Use Permit process considers “typical negative impacts” including noise or vibration and a Conditional Use Permit can be conditioned regarding noise and can be enforced by Flathead County.

✓ Motion passed 7-1

On a roll call vote the main motion to adopt Staff Report FPP-12-02 as findings of fact as amended passed unanimously.

Recommendation

Heim motioned and Stevens seconded to forward a positive recommendation of approval subject to conditions to the Flathead County Commission regarding FPP-12-02 Rosewater Subdivision.

The following subsidiary motions were made:

1. Larsen 1, Shellerud 2 - Amend the previously amended Condition #29 by replacing the words ‘emergency contingency plan’ in the first sentence with ‘operations and maintenance manual’ to state:

29. Prior to final plat approval of Phase 1, the applicant shall provide an ~~emergency contingency plan~~ *operations and maintenance manual* for the proposed artificial lake, ~~which has been reviewed and approved in writing by the Montana Department of Natural Resources and Conservation, Montana Department of Fish, Wildlife and Parks, and the U.S. Army Corps of Engineers.~~ The plan shall address long-term monitoring of the lake’s liner system and emergency response in the event of a failure of the lake’s liner system. At a minimum, the plan should include minimum qualifications of a person or firm contracted to perform the monitoring; method(s) of lake liner repair for various forms of potential damage; method of emptying the lake which will not degrade area soils, impact area roads or adjacent properties, or cause pollution of the Whitefish River, and; establish a mechanism for financial responsibility regarding the cost of long-term monitoring and necessary response/repair of the lake liner.

✓ Motion passed unanimously 8-0

On a roll call vote the main motion to recommend approval of FPP-12-02, as amended, passed unanimously 8-0.

Summary

Changes made by the Planning Board are **highlighted**. New language is shown in *italics*. Removed language is shown with a ~~strikethrough~~.

Findings of Fact:

1. The development's impact on agriculture would be minimal and limited to the subject property because adjacent properties are not dependent upon the subject property for continued agricultural use, agricultural access, or for irrigation water.
2. The developer proposes to use water from the Whitefish River to fill a proposed recreational lake on the subject property via an existing pump and irrigation line which has an associated irrigation water right established. If the developer demonstrates legal use of the river's water through an applicably updated water right there would be no adverse impact to agricultural water user facilities because the subject property is not in an irrigation district and is not party to any irrigation agreements, and use of the pump and waterline for non-agricultural purposes would be legally established.
3. The proposal for domestic water service to the lots within the subdivision is a future connection of all lots to the public water services of the Evergreen Water and Sewer District, and no proposal for the use of well(s) has been made or reviewed. The connection of the proposed subdivision lots to the District's public water services is not currently feasible, and is anticipated to be delayed as the District must complete a variety of system related tasks and neighboring property must request and be granted annexation into the District before the subject property would be contiguous to the service area of the District and capable of requesting annexation and services from the District.
4. The proposal for public water services of the Evergreen Water and Sewer District to serve the subdivision is acceptable because the subject property would be annexed into the District and the water system infrastructure would be installed to meet the District requirements to accommodate the number of lots in the proposal. Although connection may be delayed, preliminary plat approval is currently able to be extended for a mutually agreed-upon period of time between the governing body and the subdivider pursuant to MCA 76-3-610.
5. The proposal to establish five multi-user Level II wastewater treatment systems to serve all lots of the subdivision appears acceptable because submitted application materials and agency comments indicate no environmental constraints to those systems and the systems would be required to be reviewed and approved by the Flathead County Environmental Health Department and the Montana Department of Environmental Quality as applicable prior to their installation and operation.
6. Requiring the applicant to satisfy the City of Kalispell's request for installation of dry sewer mains for future use appears infeasible because conditions necessary for requiring connection to available public services, as outlined in state law (A.R.M. 17.36.328), do not yet exist at the proposal location as the subject property is not presently annexed or specifically planned for annexation by the City of Kalispell and the property is not located within 500 feet of an existing public sewer system.
7. The proposed Rosewater Lane with a new approach onto Rose Crossing appears reasonable because the paved internal subdivision road would be designed and constructed to comply with the standards outlined in Section 4.7.16 of the Flathead County Subdivision Regulations and the

Flathead County Road and Bridge Department's *Minimum Standards For Design and Construction*.

8. The anticipated impact of traffic generated by the proposed subdivision on existing area roads and intersections appears minimal and acceptable because the new approach of Rosewater Lane onto Rose Crossing occurs approximately 650-feet from the next closest road intersection at a flat area with good visibility in each direction, and the submitted Traffic Impact Study recommends no improvements to the existing transportation network be required because it identified no adverse impact to existing area roads or intersections attributable to the proposed subdivision.
9. The proposal to use internal Common Areas managed by a Home Owners Association to satisfy parkland requirements appears acceptable because the recreational Common Areas acreage exceeds the requirement for parkland as outlined in Section 4.7.24 of the Flathead County Subdivision Regulations (FCSR) and the Flathead County Parks and Recreation Department has not indicated concern with the proposal.
10. The proposed bike/pedestrian easement is not compliant with Section 4.7.19 FCSR in terms of width because it is situated adjacent to Rose Crossing which is a proposed connector trail route as shown on the Flathead County Trails Plan, requiring an easement at least 15 feet in width.
11. Pursuant to Section 4.7.26 FCSR, the proposal site is subject to adopted standards of the Kalispell Fire Department pertaining to fire protection because the subdivision is located within one mile from the corporate limits of the City of Kalispell, where the City has annexed area on the west side of Whitefish Stage Road.
12. The proposal would not adversely impact services of the West Valley Fire District or the Kalispell Fire Department because the location is in close proximity to fire stations, the site would be developed with fire hydrants to aid in fire suppression, and adequate access may be provided for emergency vehicles via the entrance gate and a secondary emergency access located off adjacent Pine Grove Lane.
13. Effects of the proposed subdivision on local services would be minimal with imposed conditions because necessary utilities are currently available to the property within access and utility easements, emergency service providers would have adequate access to the subdivision, the area is close to schools which have adequate capacity to accommodate additional students from the subdivision, a compliant mechanism for road maintenance exists, and the proposal would not adversely impact existing public water/wastewater services.
14. Impact to the other criteria discussed relative to 'impact on local services' would be minimal and acceptable with the imposition of conditions because the subject property and the primary accesses have no apparent physical constraints which cannot be adequately addressed through conditions of approval.
15. The proposed subdivision site is believed to be underlain by a perched aquifer based upon submitted mapping, groundwater monitoring results, and public testimony from long-term farmers and residents of the area. The presence of the perched aquifer is of particular interest because it is relatively shallow and covered by silty/sandy soils, and the proposal would establish five multi-user Level II wastewater treatment systems and a 27 acre lake above it.
16. Impacts to water quality as a result of the proposed residential elements of the subdivision are anticipated to be minimal because there are no surface waters on the site, the site is not subject to shallow groundwater within 8-feet of the ground surface, all lots would be served by a

public water system and Level II wastewater treatment systems, the stormwater drainage plan would effectively manage stormwater runoff onsite, and the proposed water, wastewater, and drainage systems will be required to undergo review and receive approval from the Montana Department of Environmental Quality.

17. Dependable installation and long-term scientific monitoring of the proposed 27 acre lake and its liner system is essential in order to not impact water quality because in the event the lake's liner system fails the leaking water could sink below the lake and contaminate groundwater of the perched aquifer, and in a worst-case scenario lead to significant unmitigated impact to the Whitefish River resulting from large-scale erosion or mass wasting 'slumping' of the steep slopes and banks of the river drainage.
18. Because a failure of the proposed artificial lake's liner system could impact water quality, adverse effects of the proposed lake on the natural environment would be acceptable only with the imposition of a condition requiring the developer to establish a comprehensive emergency contingency plan to address monitoring of the lake and response in the event of a failure of the lake's liner system.
19. While the residential use of the proposed Lots is not anticipated to generate permanent continuous impacting noise to area residents or wildlife, waterskiing activities occurring on the proposed lake may generate regularly occurring impacting noise which is not currently present at the location but which may be minimized through proposed design measures but cannot be fully mitigated.
20. Minimal impacts to flora are anticipated because the site is predominately grass covered and sparsely vegetated with trees. No plant species of concern have been identified as being present on the subject property, completion and adherence to a weed control plan will be a condition of preliminary plat approval, and the proposed Common Areas would serve to preserve perimeter areas in their present vegetated state and buffer subdivision improvements from the steeper forested but erosion prone slopes of the Whitefish River drainage.
21. No impacts to floodplain, wetland or riparian areas, or historical structures are anticipated as a direct result of the proposed subdivision because none of these features exist on the subject property.
22. Adverse effects of the proposed Lots and subdivision improvements on the natural environment would be minimal and acceptable with the imposition of conditions requiring the developer to mitigate dust and to take necessary steps to manage noxious weeds on site.
23. Adverse impacts of the proposed subdivision on wildlife are not anticipated because substantial acreage and large buffers would mitigate negative impacts to the Whitefish River Fishery, and areas proposed for development on the property are not specifically used as general habitat by 'species of concern' which have been identified as being present at certain locations in the vicinity of the subdivision.
24. The proposed subdivision is not anticipated to introduce adverse impacts to wildlife habitat because the site contains only minimal general habitat for 'species of concern' which have been identified in the vicinity of the subdivision according to submitted data from the Montana Natural Heritage Program.
25. Impacts of the proposed subdivision on the area road network appear to be acceptable because the submitted Traffic Impact Study indicates no offsite improvements to area roads or intersections are called for and comments from the Flathead County Road and Bridge Department and the Montana Department of Transportation indicate proposal is acceptable in

regard to the capability of the road network to safely accommodate the new traffic of the proposed subdivision in addition to traffic already using the area roads.

26. The subject property is located in the West Valley Fire District and *the applicant is proposing the subdivision to comply with* ~~is also subject to reasonable compliance with~~ *is also subject to reasonable compliance with* fire protection standards of the Kalispell Fire Department because the proposal site is within one mile from the municipal boundary of the City of Kalispell. The Kalispell Fire Department has requested a siren activated opening mechanism be installed on the automated subdivision entrance gate and a secondary emergency ingress/egress be situated across Common Area 'F' from Pine Grove Lane.
27. Considering the submitted geotechnical report recommends monitoring for leaking, and four instances of historic large scale 'slumps' are documented as having occurred in proximity to the subject property it appears there is a potential geological hazard which could arise from a detrimental leak of the proposed lake's liner system causing extreme saturation of soils around the lake. This potential impact can be mitigated with the imposition of conditions related to long-term monitoring, *long-term maintenance*, and establishment of an emergency contingency plan.
28. Minimal risks to public health and safety are anticipated with the imposition of conditions because the site is not located in a special flood hazard area; the proposal for water, sanitation, and stormwater will be required to be reviewed and approved prior to installation of the proposed new facilities; each lot has adequate legal and physical access; there are no high voltage electric or high pressure gas lines on or around the subject property, and; there are no identified apparent hazards associated with avalanche, or airport influence areas.
29. The preliminary plat would conform to all provisions of the Montana Subdivision and Platting Act if it contains all elements required to meet state survey requirements, which would be determined when it is reviewed by the Flathead County Examining Land Surveyor prior to final plat approval.
30. No variances are requested or required. A two-phase phasing plan has been proposed. The proposed subdivision is in general compliance with the Flathead County Subdivision Regulations, effective June 1, 2012 as compliant legal and physical access would be provided and potential impacts to the primary review criteria appear able to be adequately addressed by conditions.
31. The proposal has been reviewed as a major subdivision in accordance with statutory criteria and standards outlined in Section 4.4 of the Flathead County Subdivision Regulations effective June 1, 2012.
32. The preliminary plat identifies adequate easements for utilities to serve the subdivision. All other easements associated with this subdivision and the subdivided property shall be clearly located on the Final Plat to satisfy applicable requirements of the Montana Subdivision and Platting Act and the Flathead County Subdivision Regulations.
33. Rose Crossing provides legal and physical access to the subdivision, and the proposed Rosewater Lane would provide legal and physical access to the individual Lots. Rosewater Lane would be privately maintained, occurring within a 60 foot wide private road and utility easement, and would be constructed and paved in compliance with applicable Flathead County standards.
34. The preliminary plat is under review concurrently with a proposal to establish a SAG-5 Residential PUD which would overlay the underlying SAG-5 zoning of the subject property.

35. *The impact on public health and safety with regard to noise will be acceptable because the waterski lake will be subject to the Conditional Use Permit process per the Rosewater P.U.D., and the Conditional Use Permit process considers “typical negative impacts” including noise or vibration and a Conditional Use Permit can be conditioned regarding noise and can be enforced by Flathead County.*

Conditions:

1. The applicant shall receive physical addresses in accordance with Flathead County Resolution #1626B. All road names shall appear on the final plat. Street addressing shall be assigned by Flathead County. [Section 4.7.16(g)(iv), 4.7.26(c) Flathead County Subdivision Regulations (FCSR)]
2. The applicant shall show proof of a completed approach permit from the Flathead County Road and Bridge Department for the approach of Rosewater Lane onto Rose Crossing indicating the approach has been built and received final inspection and final approval. [Section 4.7.16, FCSR]
3. ~~The applicant shall comply with reasonable fire suppression and access requirements of the West Valley Fire District and the Kalispell Fire Department. A letter from each fire chief stating that the plat meets the requirements of the fire District (or Department) shall be submitted with the application for Final Plat. [Section 4.7.26(b), FCSR]~~
4. All areas disturbed during development of the subdivision shall be re-vegetated in accordance with an approved Weed Control Plan and a letter from the County Weed Supervisor stating that the Weed Control Plan has been approved shall be submitted with the final plat. [Section 4.7.25, FCSR]
5. All internal subdivision roads (Rosewater Lane) shall be certified by a licensed engineer and constructed and paved at least 22-feet wide in accordance with the *Flathead County Minimum Standards for Design and Construction*, as applicable. [Sections 4.7.16, 4.7.17 FCSR]
6. With the application for final plat, the applicant shall provide a compliant Road Users' Agreement which requires each property owner to bear his or her pro-rata share for maintenance of the roads within the subdivision and for any integral access roads lying outside the subdivision. [Section 4.7.15(e), FCSR]
7. All utilities shall be extended underground to abut and be available to each lot, in accordance with a plan approved by the applicable utility providers. [Section 4.7.23, FCSR]
8. The proposed water, wastewater treatment, and stormwater drainage systems for the subdivision shall be reviewed, as applicable, by the Flathead City-County Health Department and approved by the Montana Department of Environmental Quality. [Section 4.7.12, 4.7.20, 4.7.21 FCSR]
9. The mail delivery site shall be provided with the design and location approved by the local postmaster of USPS. A letter from the postmaster stating that the applicant has met their requirements shall be included with the application for final plat. [Section 4.7.28, FCSR]
10. In order to assure the provisions for collection and disposal of solid waste, the developer shall submit a letter from the applicable solid waste contract hauler stating that the hauler is able to provide service to the proposed subdivision. [Section 4.7.22, FCSR]
11. The following statements shall be placed on the face of the final plat applicable to all lots:
 - a. All road names shall be assigned by the Flathead County Address Coordinator and clearly identified and house numbers will be clearly visible from the road, either at the driveway

- entrance or on the house. House numbers shall be at least four inches in length per number. [Section 4.7.26(c), FCSR]
- b. All utilities shall be placed underground. [Section 4.7.23, FCSR]
 - c. The owners shall abide by the guidelines set forth in the approved Dust and Air Pollution Control and Mitigation Plan during and after site construction and development activities. [Section 4.7.14, FCSR]
 - d. Solid Waste removal for all lots shall be provided by a contracted solid waste hauler. [Section 4.7.22, FCSR]
 - e. Lot owners are bound by the Weed Control Plan to which the developer and the Flathead County Weed Department agreed. [4.7.25, FCSR]
12. The final plat shall comply with state surveying requirements. [Section 76-3-608(b)(i), M.C.A.]
 13. The owners shall abide by the guidelines set forth in the approved Dust and Air Pollution Control and Mitigation Plan during and after site construction and development activities. [Section 4.7.14, FCSR]
 14. All road names shall be approved by Flathead County and clearly identified and house numbers will be clearly visible from the road, either at the driveway entrance or on the house. House numbers shall be at least four inches in length per number. [Section 4.7.26(c), FCSR]
 15. Where the aggregate total disturbed area of any infrastructure construction in the proposed subdivision as defined in A.R.M. 17.30.1102(28) is equal to, or greater than one acre; or where when combined with subsequent construction of structures such disturbed area will be equal to, or greater than one acre, a Montana State Department of Environmental Quality General Permit for Stormwater Discharges Associated with Construction Activity (General Permit) shall be obtained prior to any site disturbance or construction. [17.30.1115 Administrative Rules of Montana (A.R.M.)]
 16. All required improvements shall be completed in place or a Subdivision Improvement Agreement shall be provided by the subdivider prior to final approval by the County Commissioners. [Section 4.0.16, FCSR]
 17. The final plat shall be in substantial compliance with the plat and plans submitted for preliminary plat review, except as modified by these conditions. [Section 4.1.13, FCSR]
 18. Preliminary plat approval is valid for three years. The final plat shall be filed prior to the expiration of the three years. Extension requests to the preliminary plat approval shall be made in accordance with the applicable regulations and following associated timeline(s). [Section 4.1.11 FCSR]
 19. The proposed phasing plan shall be implemented in accordance with the requirements of Section 4.4.2 of the Flathead County Subdivision Regulations; each development phase submitted for final plat review and approval shall be required to meet all conditions of approval established or identify where certain conditions have been previously met or are not applicable to the particular phase.
 20. The proposed extensions and connections of the public water system shall comply with the standards and requirements of the Evergreen Water and Sewer District. A letter from the district stating that the water improvements meet the district requirements shall be submitted with the application for Final Plat. [Sections 4.7.20, 4.7.21 FCSR]
 21. Prior to final plat approval of Phase 1, the applicant shall provide evidence that all applicable water right requirements of the Department of Natural Resources Water Resources Division pertaining to the use of Whitefish River water for filling of the proposed lake have been met.

22. A total of 64.249 acres (minimum) of land shall be dedicated as open space and maintained by the Homeowner's Association in accordance with the provisions of Section 4.7.24(d)(i) and (ii) FCSR, and shall be designated on the face of the final plat. The dedication of open space may be made over the course of two phases of development, in accordance with the proposed phasing plan submitted with the application materials.
23. The proposed water supply for fire suppression and hydrants onsite shall meet all applicable requirements set forth in Section 4.7.26(a) of the Flathead County Subdivision Regulations.
24. Stops signs shall be installed at the intersection of Rosewater Lane and Rose Crossing, and at the intersection of the un-named storage/maintenance access road and Rosewater Lane to ensure safe and efficient traffic flow to, from and within the proposed subdivision.
25. An automated gate installed at the main subdivision entrance off of Rose Crossing shall be equipped with a siren activated opening mechanism meeting the specifications of the West Valley Fire District and the Kalispell Fire Department.
26. A secondary emergency access providing ingress/egress and meeting the applicable requirements for the size and weight of emergency vehicles and apparatus shall be established at a suitable location across Common Area 'F' between Pine Grove Lane and Rosewater Lane. If the access is chained or gated, developer shall provide an access key to the fire district for use in the case of emergency.
27. A bike/pedestrian path easement of compliant width (15-feet) shall be shown on the face of the final plat. [Sections 4.7.19 FCSR]
28. The design and construction of the lake shall include installation of monitoring wells as recommended in the geotechnical report submitted and reviewed with the preliminary plat.
29. Prior to final plat approval of Phase 1, the applicant shall provide an ~~emergency contingency plan~~ *operations and maintenance manual* for the proposed artificial lake, ~~which has been reviewed and approved in writing by the Montana Department of Natural Resources and Conservation, Montana Department of Fish, Wildlife and Parks, and the U.S. Army Corps of Engineers.~~ The plan shall address long-term monitoring of the lake's liner system and emergency response in the event of a failure of the lake's liner system. At a minimum, the plan should include minimum qualifications of a person or firm contracted to perform the monitoring; method(s) of lake liner repair for various forms of potential damage; method of emptying the lake which will not degrade area soils, impact area roads or adjacent properties, or cause pollution of the Whitefish River, and; establish a mechanism for financial responsibility regarding the cost of long-term monitoring and necessary response/repair of the lake liner. *The plan shall include a method for continuous monitoring of water level in two monitoring wells located southeast of the lake.*
30. Prior to final plat approval of Phase 1, the applicant shall provide evidence that a qualified person or firm has been contracted to perform long-term lake monitoring.
31. The final PUD Plan of Rosewater SAG-5 PUD shall be approved by Resolution of the Flathead County Board of Commissioners in order that the proposed subdivision is compliant with applicable local zoning prior to final plat approval.